No. 80-1138

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MAYOR AND CITY COUNCIL OF BALTIMORE
AND JAMES J. DEMBECK,

Petitioners.

v.

JAMES CROCKETT AND MARY CROCKETT, HIS WIFE,

Respondents.

BRIEF IN RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

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QUESTION PRESENTED

Whether a municipal ordinance effectively banning "For Sale" signs on individual dwelling units in areas zoned as Residential and Office-Residential Districts in the City of Baltimore — purportedly enacted as an exercise of the municipality's police power through the adoption of a zoning ordinance — may be declared in violation of the First Amendment on a motion for summary judgment?

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ORDINANCES AND RULES OF PROCEDURE

Baltimore City Code, Article 30 — Zoning, Chapter 10 — Sign Regulations.*

Maryland Rules of Procedure, Rule 610, Sections a.1, a.3 and d.1.*

STATEMENT OF THE CASE

Because respondents believe that petitioners' statement of the case, beginning at page 4 of petitioners' petition for a writ of certiorari, is inaccurate and argumentative in a number of respects and omits certain facts which may be

* Set forth in appendix to this brief.

of significance, respondents believe it appropriate to restate the case with appropriate references to the joint record extract below. References to "JRX" refer to the joint record extract in the Court of Special Appeals of Maryland. References to "P. App." refer to the appendix to petitioners' petition for a writ of certiorari. References to "R. App." refer to the appendix to respondent's brief, *infra*.

As set forth in petitioners' brief (pp. 2-4) the City of Baltimore, in 1971, adopted a comprehensive rezoning Ordinance (Ordinance No. 1051, approved April 20, 1971), under the provisions of which "For Sale" signs (subject to restrictions as to number, illumination, height and area) were permitted on all residential buildings in Residence and Office-Residence Districts. The Ordinance permitted — and still permits — a variety of other signs in Residence and Office-Residence Districts (building and construction signs, subdivision development and planned development signs, name plates, etc.) (R. App. 9a-10a).

Subsequent to the enactment of Ordinance No. 1051 in 1971, Michael A. Pretl, an attorney acting as a representative of a number of community and improvement associations in Northeast Baltimore, discussed with the Commissioner of the Baltimore City Department of Housing and Community Development, the feeling on the part of the associations represented by him that there was a need for the elimination of "For Sale" signs in certain residential areas of Baltimore City. The Commissioner thereupon contacted a member of his Department, Mr. Charles Noon, Director of the Division of Neighborhood Development. A meeting between Mr. Pretl, Mr. Noon and James J. Dembeck, Zoning Administrator of Baltimore City, was arranged at which Mr. Pretl's request for the elimination of "For Sale" signs in residential areas was discussed. Mr. Pretl wanted "For Sale" signs prohibited only in certain designated residential areas or communities of Baltimore

City. Mr. Dembeck's position was that if "For Sale" signs were to be prohibited in residential areas, such prohibition should be on a City-wide basis. After discussion, Mr. Dembeck, in cooperation with Mr. Pretl, drafted City Council Bill No. 764, which thereafter, on April 9, 1973, was introduced by City Council President Orlinsky and Councilmen Gallagher, Burns and Douglass at the request of a number of community organizations in Northeast Baltimore (R. App. 5a).

The effect of Bill No. 764, subsequently enacted as Ordinance No. 701, approved July 19, 1974, was to repeal and reordain Section 10.0-2b1 of the Zoning Ordinance so as to limit the use of sale or lease signs in Residence and Office-Residence Districts to multiple family dwellings, apartment hotels, and non-residential buildings, thereby excluding the use of sale or lease signs on all other types of residential property. The amendments to Section 10.0-2b1 of the Zoning Ordinance are shown on pages 3-4 of petitioners' brief.

As interpreted by the City and its Zoning Administrator, Section 10.0-2b1 of the Zoning Ordinance, as thus amended, prohibited a sale or lease sign on respondents' property. (JRX, E. 4).

Respondents are the owners of a property at 1929 McCulloh Street, Baltimore, such property being located in a neighborhood which now is, and for many years has been, a stabilized residential community, inhabited almost exclusively by a black population, but which is located in a district designated by the City as an "R-8" Residential District. Wishing to sell said property, respondents posted a "For Sale" sign, of modest size, on said property (R. App. 12a-13a).

On or about September 19, 1977, a Violation Notice was issued by the City to one of the respondents, reciting the

fact that a "sale or lease sign [was] posted on property" and ordering removal of the sign within 24 hours (JRX, E. 24). Upon the failure or refusal of the respondents to remove the "For Sale" sign from their property, the City, on December 13, 1977, filed a bill of complaint in the Circuit Court of Baltimore City against respondents, seeking to enjoin respondents from erecting or displaying a "For Sale" sign on their premises (JRX, E. 3-5).

An Answer filed on behalf of the respondents (JRX, E. 7-9), admitted all material allegations of the City's Bill of Complaint except the City's paraphrastic description of the provisions of the City Zoning Ordinance relied upon, which provisions, respondents said, spoke for themselves. The respondents asserted in their Answer, however, that the provisions of the Zoning Ordinance relied upon by the City (Section 10.0-2 of the Zoning Ordinance, as amended by Ordinance No. 701, approved July 19, 1974) were illegal and invalid (1) in that they constituted a violation of respondents' right of free speech as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States, (2) in that such provisions denied to respondents the equal protection of the laws to which they were entitled under the Fourteenth Amendment of the Constitution of the United States, and (3) in that such provisions constituted an arbitrary, capricious, vague and unreasonable exercise of the police power by the City, depriving respondents of their rights and property in violation of the due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Respondents thereafter filed a Motion for Summary Judgment on the ground that there was no genuine dispute between the parties as to any material fact and that the Appellees were entitled to judgment as a matter of law, because Section 10.0-2 of the Baltimore City

Zoning Ordinance, as amended, to the extent that it prohibited "For Sale" or "For Lease" signs on any non-multiple family dwelling or non-apartment hotel dwelling in areas of Baltimore City zoned as Residence and Office-Residence Districts was illegal and unconstitutional in that it constituted a violation of Appellees' right of free speech as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States (JRX, E. 10-13).

The City filed an Answer to respondents' Motion for Summary Judgment, claiming in substance that there was a dispute between the parties as to material facts since respondents contended that Section 10.0-2 was "strictly a ban on 'for sale' signs", whereas the City contended that Section 10.0-2 was part of the comprehensive zoning ordinance, and that the limitation of commercial advertising in a residential area was a legitimate exercise of the police power through the adoption of [a] proper zoning ordinance (JRX, E. 14-15; Petitioners' Brief, p. 5).

The City filed with its Answer to respondents' Motion for Summary Judgment an Affidavit of the petitioner James J. Dembeck, Zoning Administrator of the City, purporting to set forth the circumstances under which the City's Zoning Ordinance was amended to prohibit "For Sale" signs (R. App. 1a-3a).

Thereafter, the petitioners and respondents, by written Stipulation, filed in the proceeding a true and correct copy of the Baltimore City Council File pertaining to Ordinance No. 701, approved July 19, 1974 (City Council Bill No. 764, introduced April 9, 1973) (JRX, E. 27-61), filed a true and correct copy of Chapter 10 of Ordinance No. 1051 of the Mayor and City Council of Baltimore, approved April 20, 1971, as amended (R. App. 7a-11a), and, by such Stipulation, supplemented and clarified Mr. Dembeck's Affidavit as to the circumstances leading up to the

introduction and passage of said Ordinance No. 701 (R. App. 4a-6a).

The respondents filed in the proceeding the affidavit of James Crockett, one of the respondents, stating, *inter alia,* that he had been actively engaged in the real estate business as a licensed real estate agent and broker for approximately 23 years and had served as a member of the Real Estate Commission of the State of Maryland from 1971 to 1975, acting as Chairman of said Commission for the year 1973, and that, as the result of his experience in the real estate business and as a member and Chairman of the Maryland Real Estate Commission, it was his opinion that the posting of a "Sale" sign on the property owned by him and his wife was the most effective method for disseminating to potential buyers not deliberately seeking sales information the fact that their property was for sale and that the alternative methods of communication to prospective home buyers, such as newspaper advertising and multiple listing, involved more expense and less independence and were less effective than the posting of a "Sale" sign (R. App. 13a).

The petitioners introduced an Affidavit from Joseph Di Angelo, a City building inspector, stating that, on March 26, 1979, [the day before the hearing before a General Equity Master] he personally had inspected the premises at 1929 McCulloh Street, Baltimore, and noted the presence of a "Sale" sign located upon said premises (R. App. 14a-15a).

A hearing was held before a General Equity Master on March 27, 1979, at which no testimony was taken, but at which counsel for both petitioners and respondents were heard. Counsel for the respondents submitted a legal Memorandum at the time of the hearing and, subsequently, a legal Memorandum was filed on behalf of the petitioners.

After having considered the pleadings, affidavits and stipulation, having heard counsel and after consideration of the legal Memoranda filed on behalf of the respective parties, the General Equity Master, on April 17, 1979, filed his Report and Recommendation, recommending that respondents' Motion for Summary Judgment be granted and that the Bill of Complaint be dismissed, with costs to be assessed against the petitioners (P. App. 35-36).

Thereafter, on April 20, 1979, Exceptions to the Master's Report and Recommendation were filed on behalf of the City (JRX, E. 69).

After arguments before Judge Arabian, in the Circuit Court of Baltimore City, the Master's Report and Recommendation were adopted, ratified and approved, the respondents' Motion for Summary Judgment was granted, and petitioners' Bill of Complaint was dismissed by the Circuit Court of Baltimore City (P. App. 31-34).

Petitioners thereafter appealed to the Court of Special Appeals of Maryland which, by its opinion (P. App. 20-30) and mandate (P. App. 18), affirmed the order of Judge Arabian.

A petition for a writ of certiorari thereafter was filed by petitioners with the Court of Appeals of Maryland (P. App. 2-17), which was denied (P. App. 1).

SUMMARY OF ARGUMENT

The courts below, on Respondents' Motion for Summary Judgment, and after consideration of the pleadings, affidavits and stipulation filed in the proceeding, correctly decided that an ordinance of the City of Baltimore prohibiting "For Sale" signs on all buildings other than multiple family dwellings, apartment hotels, and non-residential buildings, was a violation of Respondents' First Amendment rights, where the sole justification for such

ordinance asserted by the City was its zoning interests. Such decision of the courts below was not in conflict with the applicable decisions of this Court.

ARGUMENT

I.

THE MAYOR AND CITY COUNCIL OF BALTIMORE MAY NOT, UNDER ITS ZONING POWERS, CONSTITUTIONALLY PROHIBIT THE POSTING OF "FOR SALE" SIGNS IN AREAS ZONED AS RESIDENTIAL AND OFFICE-RESIDENTIAL DISTRICTS IN BALTIMORE CITY.

The First Amendment to the Constitution of the United States provides that "Congress shall make no law * * * abridging the freedom of speech, or of the press; * * *," and this guarantee is applicable to the States through the due process clause of the Fourteenth Amendment. *Virginia State Board of Pharmacy, et al. v. Virginia Citizens Consumer Council, Inc., et al.*, 425 U.S. 748, 48 L. Ed. 2d 346 (1976).

Commercial speech, for many years, was not accorded First Amendment protection. However, by reason of a developing series of relatively recent decisions by this Court, there can be no question but that commercial speech today enjoys a large measure of First Amendment protection. See *Bigelow v. Virginia*, 421 U.S. 809, 44 L.Ed. 600 (1975) (abortion advertisement, in violation of a Virginia statute, held entitled to First Amendment protection); *Virginia State Board of Pharmacy, et al. v. Virginia Citizens Consumer Council, Inc., et al., supra* (statute prohibiting advertising of prices of prescription drugs overturned on First Amendment grounds); and *Bates v. Arizona State Board*, 433 U.S. 350, 53 L. Ed. 2d 810 (1977) (blanket suppression of advertising by lawyers held in violation of First Amendment right of free speech).

One of the most significant recent decisions, so far as this case is concerned, is that of *Linmark Associates,*

Inc., et al. v. Township of Willingboro, et al., 431 U.S. 85, 52 L. Ed. 2d 155 (1977), involving an ordinance enacted in 1974 by the Township of Willingboro, New Jersey, prohibiting the posting of signs pertaining to the lease, rental or sale of premises (except for model homes) located in areas zoned for residential use.

This Court, in an opinion by Justice Marshall expressing the unanimous view of the eight participating members of the Court, held that the Willingboro ordinance, despite the fact that it was "enacted to achieve an important governmental objective", i.e., the promotion of stable, racially integrated housing, was constitutionally infirm for two reasons. First, after applying a "balancing test" (i.e., "assessing the First Amendment interest at stake and weighing it against the public interest allegedly served by the regulation"), this Court held that Willingboro had failed to establish a sufficient relationship between its sign ban and a diminution of panic selling. Secondly, it was held that the ordinance impaired the free flow of truthful information of "vital concern" to the township's residents.

The Court, in its opinion by Justice Marshall, said (431 U.S. 96-97, 52 L. Ed. 2d 164):

> *"The constitutional defect in this ordinance, however, is far more basic.* The Township Council here, like the Virginia Assembly in Virginia Pharmacy Bd., acted to prevent its residents from obtaining certain information. That information, which pertains to sales activity in Willingboro, is of vital interest to Willingboro residents, since it may bear on one of the most important decisions they have a right to make: where to live and raise their families. The Council has sought to restrict the free flow of these data because it fears that otherwise homeowners will make decisions inimical to what the Council views as the homeowners' self-interest and the corporate interest of the township: they will choose to leave town.

The Council's concern, then, was not with any commercial aspect of 'For Sale' signs — with offerors communicating offers to offerees — but with the substance of the information communicated to Willingboro citizens. If dissemination of this information can be restricted, then every locality in the country can suppress any facts that reflect poorly on the locality, so long as a plausible claim can be made that disclosure would cause the recipients of the information to act 'irrationally'. Virginia Pharmacy Bd. denies government such sweeping powers. As we said there in rejecting Virginia's claim that the only way it could enable its citizens to find their self-interest was to deny them information that is neither false nor misleading:

> 'There is . . . an alternative to this highly paternalistic approach. That alternative is to assume that this information is not in itself harmful, that people will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them . . . . But the choice among these alternative approaches is not ours to make or the Virginia General Assembly's. It is precisely this kind of choice, between the dangers of suppressing information, and the dangers of its misuse if it is freely available, that the First Amendment makes for us.' 425 U.S., at 770, 48 L. Ed. 2d 346, 96 S. Ct. 1817.

"Or as Mr. Justice Brandeis put it: 'If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression.' Whitney v. California, 274 U.S. 357, 377, 71 L. Ed. 1095, 47 S. Ct. 641 (1927) (concurring).

"Since we can find no meaningful distinction between Ordinance 5-1974 and the statute overturned in Virginia Pharmacy Bd., we must conclude that this

ordinance violates the First Amendment." (Emphasis added)

The City, in this case, throughout the proceedings before the General Equity Master and before Judge Arabian in the Circuit Court of Baltimore City, in its Answer to Appellees' Motion for Summary Judgment and otherwise, attempted to justify its prohibition of sale or lease signs in Residence and Office-Residence Districts by reason of the fact that such prohibition constituted a part of the City's "comprehensive zoning ordinance". (JRX, E. 14-15).

While no mention of zoning is made in the Supreme Court's opinion in *Linmark, supra,* reference to the dissenting opinion of Judge Gibbons in the U.S. Court of Appeals for the Third Circuit shows clearly that the Willingboro ordinance was, like Baltimore's ordinance, a part of the township's zoning law, which dealt "comprehensively with the erection and maintenance of signs". And, similarly to Baltimore's prohibition of "for sale" and "for lease" signs, Willingboro's ban applied only to "areas zoned for residential pruposes." *Linmark Associates, Inc. v. Township of Willingboro,* 535 F.2d 786, 805-806 (1976).

It is to be noted, of course, that the Baltimore City zoning ordinance, while not permitting "sale" or "lease" signs in Residence and Office-Residence Districts, does permit a number of other types of signs. Even "sale" or "lease" signs to a height of eight feet and an area of 36 square feet, are permitted for multiple family dwellings, apartment hotels and non-residential buildings in Residence and Office-Residence Districts (R. App. 11a).

Petitioners point out in their brief (p. 10) that, since *Linmark,* this Court has handed down its opinion and decision in *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York,* U.S. , 65 L. Ed. 2d 341, 100 S. Ct. 2343 (1980), in which it was held

that a four-part analysis should be applied in commercial speech cases:

> "In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest." (65 L. Ed. 2d 351, 100 S. Ct. 2351)

Although *Central Hudson* was not decided until after the Court of Special Appeals of Maryland had rendered its decision in this case, it is implicit in the opinion of the Court of Special Appeals that, under the circumstances of this case, the prohibition of "for sale" signs in Residence and Office-Residence Districts in the City of Baltimore did not directly advance the governmental interest asserted, pointing out that, like the Willingboro ordinance in *Linmark*, the City was not genuinely concerned with the place of the speech or the manner of the speech, and had not prohibited all signs or all signs of a particular size or shape (P. App. 28).

II.

RESPONDENTS' MOTION FOR SUMMARY JUDGMENT WAS PROPERLY GRANTED BELOW.

Rule 610 a 1, Maryland Rules of Procedure, provides that "a party against whom a claim is asserted, may at any time make a motion for a summary judgment in his favor as to all or any part of the claim on the ground that there is no genuine dispute as to any material fact and that he is entitled to judgment as a matter of law." (R. App. 15a).

In this case, there was "no genuine dispute as to any material fact" and Respondents so asserted in their Motion for Summary Judgment.

For the purpose of their Motion for Summary Judgment, Respondents accepted, and in no way controverted, the City's assertion in its Answer to Motion for Summary Judgment "that Section 10.0-2 is part of the comprehensive zoning ordinance." (JRX, E. 14; Petitioners' Brief, p. 5). Respondents did not controvert the affidavit of James J. Dembeck (JRX, E. 16-17; R. App. 1a-3a), filed by the City with its Answer to Motion for Summary Judgment, and, in fact, by way of supplementing Mr. Dembeck's affidavit, entered into a written Stipulation with counsel for the City with regard to the circumstances under which the Zoning Ordinance was amended to prohibit "For Sale" and "For Lease" signs (R. App. 4a-6a).

Respondents did not controvert the affidavit of Joseph Di Angelo, filed by the City, stating that he had inspected Respondents' property on March 26, 1979, and had noted the presence of a "Sale" sign thereon (R. App. 14a-15a).

Respondents filed the affidavit of James Crockett (R. App. 12a-13a), but the Petitioners did not, in any proper way, controvert Mr. Crockett's affidavit.

Petitioners had it within their power to file one or more affidavits or opposing affidavits, as permitted by Rule 610, Maryland Rules of Procedure, but failed to do so. Their unsupported assertion now that there is a dispute as to facts should go unheard.

As was said in *Melbourne v. Griffith*, 263 Md. 486, 491; 283 A.2d 363, 365-366 (1971):

> "Where, as here, the pleadings, the depositions, and the affidavits submitted by the moving party set forth sufficient competent evidence to entitle him to summary judgment, it is incumbent upon the opposing

> party to present such evidence as will give rise to a triable issue of fact in order to prevent the entry of summary judgmert. To do this he must show by facts admissible in evidence that there is a genuine dispute as to a material fact. *Fishman Const. Co. v. Hansen,* 238 Md. 418, 422-23, 209 A.2d 605 (1965). This is no less true when the moving party is the defendant rather than the plaintiff. A bald assertion of liability and a mere formal denial of liability stand on the same basis. Neither is sufficient in and of itself to prevent entry of summary judgment in favor of the moving party.
>
> "The material, central issue in this case is whether [the plaintiff's agent] was the procuring cause of the sale. The affidavit and [plaintiff's agent's] deposition show he was not. Since [the plaintiff] has not by affidavit or deposition shown anything to the contrary, there is no genuine dispute as to a material fact. Summary judgment should have been entered in favor of [the defendant]."

Or as was said in *Salisbury Beauty Schools v. State Board of Cosmetologists,* 268 Md. 32, 40; 300 A.2d 367, 373 (1973);

> "A bare allegation in a general way that there is a dispute as to material facts is never sufficient to defeat a motion for summary judgment; * * *." (citing *Melbourne v. Griffith, supra.*)

Petitioners, in their brief (p. 8), state that they were denied "an opportunity to produce evidence bearing on the issue whether an effective ban on 'for sale' signs in residential neighborhoods is necessary to achieve viable integration or needed to assure that Baltimore remains an integrated community".

As noted by the Court of Special Appeals in its opinion (P. App. 28), the City, in its pleadings and arguments, never asserted that the purpose of the "for sale" sign prohibition was to achieve or maintain a racially integrated community, but, in fact, avoided making such an argument.

In order to present testimony in the lower court, all that would have been required of petitioners was a pleading or an affidavit creating an issue as to a material fact (e.g., that the purpose of the "for sale" sign prohibition was to remedy a "panic selling" situation, which would have been denied by Respondents) but such a pleading or affidavit never was filed. As a consequence, both the General Equity Master (P. App. 35) and Judge Arabian (P. App. 33) found that there was no genuine dispute as to material facts.

The issue of racial integration or stabilization was never an issue in the lower court, as far as Petitioners and Respondents are concerned. The City, through Mr. Dembeck, one of the petitioners, on the contrary asserted under oath that the ordinance was enacted because "many realtors were permitting their signs to remain on properties long after they had been sold, and in some instances, included 'Sold' labels on the signs; * * * and inasmuch as * * * commercial advertising was not to be permitted in residential neighborhoods, the Zoning Ordinance was amended to prohibit 'For Sale' signs." (R. App. 2a-3a).

The "issue of racial stabilization", as an alleged issue in this case, was first embraced in oral argument before Judge Arabian by counsel for Amici Curiae as one of the purposes of the City's prohibition against "For Sale" signs in a somewhat patent effort to create a "dispute", where none had theretofore existed between the parties.

In the lower court, the City consistently, in pleading and otherwise, asserted its zoning interests as justification for its prohibition of "For Sale" signs and Respondents, for the purposes of their Motion for Summary Judgment, in no way contradicted the City's position.

Of course, upon the evidence produced in the form of pleadings, affidavits, stipulation and exhibits attached

thereto, the lower Court found that the City's ordinance "in and of itself, as it applies to the prohibition of the display of 'For Sale' signs * * * is not 'genuinely concerned' with a regulation of time, place or manner of speech." (P. App. 33).

It is earnestly urged that, in the light of the absence of "a genuine dispute [between the parties] as to any material fact" and in the further light of the lower Court's determination that the City's prohibition against "For Sale" signs was not "genuinely concerned" with a regulation of time, place or manner of speech, the granting of Respondents' Motion for Summary Judgment was entirely proper.

CONCLUSION

Respondents believe that the decisions below were correct and are in no way in conflict with the applicable decisions of this Court. Therefore, the Petition for Writ of Certiorari should be denied and the decisions of the Maryland courts should be left undisturbed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 1981, three copies of the foregoing Brief in Response to Petition for a Writ of Certiorari to the Court of Special Appeals of Maryland were mailed, first-class postage prepaid, to Benjamin L. Brown, Esquire, City Solicitor, Ambrose T. Hartman, Deputy City Solicitor, and Merle Ann Achinstein, Chief City Solicitor, 159 City Hall, Baltimore, Maryland 21202, Attorneys for Petitioners, and that all parties required to be served have been served.

Henry M. Decker, Jr.

Henry M. Decker, Jr.
Counsel of Record for
Respondents

APPENDIX

APPENDIX A

In The Circuit Court of Baltimore City

A-821/1977/A-57188

Mayor and City Council of Baltimore,
and
James J. Dembeck,
Plaintiffs

v.

James Crockett
and
Mary Crockett, his wife,
Defendants

AFFIDAVIT OF JAMES J. DEMBECK
(Filed March 27, 1979)

State of Maryland, City of Baltimore, to wit:

I HEREBY CERTIFY, That on the 26th day of December, 1978, before me, the subscriber, a Notary Public in and for the City of Baltimore, State of Maryland, personally appeared JAMES J. DEMBECK, and made oath in due form of law as follows:

I am the Zoning Administrator of Baltimore City, and, as such, one of my responsibilities is the preparation and

drafting of the Zoning Ordinance and amendments thereto.

The comprehensive rezoning in Baltimore City, which resulted in Ordinance No. 1051 of 1971 (now Article 30 of the Baltimore City Code (1976 Edition)), was the result of a great deal of study and work with the Zoning Commission, whose membership consisted of: Irving D. Alter, Charles C. W. Atwater, Edgar M. Ewing (deceased), Mrs. Edward R. Griffith, W. Burton Guy, Jr., Cyril H. Hebrant, William L. Hodges (deceased), Albert C. Klingenberg, Isaac C. Lycett, William Martien, Harry J. McGuirk, Thomas P. Perkins, III, Linwood G. Roher, Gilbert V. Rubin, George L. Russell, Jr., G. Neilson Sigler (deceased), Edward A. Supplee, Richard H. Turk, Sr. (deceased), Francis J. Valle, Stuart R. Wilcox and the Chairman, George M. Radcliffe.

Although this Commission met on many occasions, I cannot specifically recall that any one meeting was held for the purpose of discussing advertising signs, although there was general discussion on the whole issue throughout all of the time the Commission met; it was generally decided that outdoor advertising, for example, would be permitted only in those areas zoned Commercial, and prohibited from residential and office-residential areas. Later it was determined that limited treatment would apply to advertising in certain commercial areas since they were adjacent to residential areas (e.g. neighborhood shopping areas). In the same vein, it was determined to ban all commercial advertising in residential areas. In the 1971 version of the comprehensive rezoning ordinance, it was determined that "For Sale" signs would be permitted, with a limitation as to number and size. However, following passage of Ordinance No. 1051, it was determined that "For Sale" signs should also be included in the Zoning prohibition, since many realtors were permitting their signs to remain on properties long after they had been sold, and in some instances, included "Sold" labels on the signs; thus, instead of accomplishing what the original

ordinance had sought — that is the sale of residential homes — it was learned that, in addition, such signs were also being used as a form of commercial advertising, and inasmuch as it had been the Commission's determination that commercial advertising was not to be permitted in residential neighborhoods, the Zoning Ordinance was amended to prohibit "For Sale" signs.

/s/ JAMES J. DEMBECK,
Zoning Administrator
of Baltimore City.

/s/ WILLIAM I. SIENKIEWICZ,
Notary Public

My Commission
Expires: 7/1/82

APPENDIX B

In The Circuit Court of Baltimore City

A-821/1977/A-57188

Mayor and City Council of Baltimore

and

James J. Dembeck,

Plaintiffs

v.

James Crockett

and

Mary Crockett, his wife,

Defendants

STIPULATION

(Filed March 27, 1979)

The parties, by and through their respective counsel, do hereby stipulate and agree as follows:

1. That the attached file is a true and correct copy of the Baltimore City Council file pertaining to Ordinance No. 701, approved July 19, 1974 (City Council Bill No. 764, introduced April 9, 1973).

2. That attached hereto is a true and correct copy of Chapter 10 of Ordinance No. 1051 of the Mayor and City Council of Baltimore, approved April 20, 1971, as amended.

3. That the Zoning Commission, referred to in the Affidavit of James J. Dembeck, Zoning Administrator of Baltimore City, filed in this proceeding, determined that "For Sale" signs should be permitted in residential areas, with a limitation as to number and size, as reflected by Section 10.0-2 of Ordinance No. 1051, approved April 20, 1971, prior to its amendment by said Ordinance No. 701.

4. That the said Zoning Commission played no part in the preparation, introduction or passage of said Ordinance No. 701 (Bill No. 764), nor did it consider the same.

5. That, so far as is known, said Ordinance No. 701 resulted from the following series of events: Subsequent to the enactment in 1971 of Ordinance No. 1051, Michael A. Pretl, an attorney acting as a representative of a number of community and improvement associations in Northeast Baltimore, discussed with Commissioner Robert C. Embry, Jr., of the Baltimore City Department of Housing and Community Development, the feeling on the part of the associations represented by him that there was a need for the elimination of "For Sale" signs in certain residential areas of Baltimore City. Commissioner Embry thereupon contacted a member of his Department, Mr. Charles Noon, Director of the Division of Neighborhood Development. A meeting between Mr. Pretl, Mr. Noon and James J. Dembeck, Zoning Administrator of Baltimore City, was arranged at which Mr. Pretl's request for the elimination of "For Sale" signs in residential areas was discussed. Mr. Pretl wanted "For Sale" signs prohibited only in certain designated residential areas or communities of Baltimore City. Mr. Dembeck's position was that if "For Sale" signs were to be prohibited in residential areas, such prohibition should be on a City-wide basis. After discussion, Mr. Dembeck, in cooperation with Mr. Pretl, drafted City Council Bill No. 764, which thereafter, on April 9, 1973, was introduced by City Council President Orlinsky and Councilmen Gallagher, Burns and Douglass at the request of a number of community organizations in Northeast Baltimore.

6. That subsequent to the passage of Ordinance No. 1051 in 1971 and prior to the preparation and introduction of City Council Bill No. 764, Mr. Dembeck's office, the Office of Zoning Administration and Enforcement, had received a number of complaints about "For Sale" and "Sold" signs, primarily about "Sold" signs, in residential areas.

/s/ BENJAMIN L. BROWN,
City Solicitor,

/s/ RICHARD M. HARTMAN,
Chief City Solicitor — Housing,

/s/ C. LAURENCE JENKINS, JR.,
Assistant City Solicitor,

Attorneys for Plaintiffs.

/s/ A. DWIGHT PETTIT,

/s/ HENRY M. DECKER, JR.,

/s/ DAVID K. HAYES,

Attorneys for Defendants.

APPENDIX C

BALTIMORE CITY CODE

[ARTICLE 30]

Chapter 10

SIGN REGULATIONS

Purpose

The purpose of this chapter is to provide standards for the use and display of signs. It is recognized that signs serve an important function and, therefore, reasonable and adequate display of signs is permitted under the provisions of this chapter. At the same time, this chapter recognizes that there is a definite need to regulate the display of signs. Limitations and standards are established herein consistent with the character of the district and the uses and activities in the district. These limitations and standards are intended to encourage sound practices with respect to size, type, and placement of signs for the purpose of safeguarding and enhancing properties in residential, business, and industrial areas; providing an environment which will promote the growth and development of business in the City; protecting public investment in public buildings, open spaces, and thoroughfares; reducing hazards to motorists and pedestrians on the public ways; and promoting the public safety and general welfare.

10.01-1 General requirements.

* * * * * *

c. *Signs not to constitute traffic hazards.* No sign or other advertising structure, as regulated by this ordinance, shall be erected at the intersection of any streets in such a manner as to obstruct free and clear vision; or at any location where, by reason of the position, shape, or color, it may interfere with, obstruct the view of, or be

confused with any authorized traffic sign, signal, or device; or which makes use of the words "Stop," "Look," "Danger," or any other word, phrase, symbol, or character in such manner as to interfere with, mislead, or confuse traffic. Any such sign declared to be a traffic hazard by the Zoning Administrator, upon being so advised by the Commissioner of Transit and Traffic, shall be relocated, rearranged, or removed as directed by the Zoning Administrator.

d. The structural design and construction of signs, including their supports, shall be in accordance with the applicable requirements of the Building Code of Baltimore City.

e. Nothing in this Chapter 10 shall be deemed to permit any use of property or any sign that is prohibited by this ordinance, or by the regulations of any special sign district, or any other ordinance.

f. The following shall not be subject to the provisions of this ordinance:

1. Flags and emblems of a national or political subdivision, or of a patriotic, religious, philanthropic, civic, or educational organization;

2. Governmental signs and lights for control of traffic and other regulatory purposes, street signs, ordinary house numbers, "No Parking" signs, "No Trespassing" signs, danger signs, railroad crossing signs, and signs of public service companies indicating danger and aids to service or safety;

3. Official public notices, and notices posted by public officers in performance of their duties;

4. Memorial plaques, cornerstones, and historical tablets; and

5. Temporary signs in connection with civic noncommercial health, art, safety, and welfare campaigns. Provided, however, that all temporary signs shall be removed promptly by the sponsoring organization after the conclusion of such activities.

10.0-2 Signs in Residence and Office-Residence Districts.

Signs in Residence and Office-Residence Districts shall comply with and be subject to the following provisions:

a. General provisions:

1. No sign shall have or consist of any moving, rotating, or otherwise animated part; or (when permitted to be illuminated) any flashing, blinking, fluctuating, or otherwise animated light.

2. No roof sign, wind sign, or general advertising sign (billboards and posterboards) shall be permitted.

3. No sign shall extend above the roof line of a building to which it is attached.

4. No sign shall project beyond the street line into the public way, unless otherwise stated in this section.

b. The following types of signs, subject to the limitations prescribed for them, shall be permitted for uses authorized as principal or conditional uses in Residence and Office-Residence Districts:

1. One non-illuminated sale or lease sign for multiple family dwellings, apartment hotels, and non-residential buildings. Such sign shall not exceed a height of eight feet if free standing, and shall not extend above the roof line if attached to a building and shall not exceed an area of 36 square feet.

2. Temporary non-illuminated building and construction signs of persons and firms connected with work on buildings under actual construction or alteration, giving their names and information pertinent to the project, not exceeding a height of 16 feet, with the combined area of all such signs not to exceed 36 square feet for each street frontage.

3. Temporary non-illuminated or indirectly illuminated subdivision development and planned development signs indicating the names and information pertinent to the project, not exceeding a height of 20 feet, with

the combined area of all such signs not to exceed 100 square feet for the project.

4. One non-illuminated or indirectly illuminated nameplate for each street frontage of the lot, not exceeding a height of 12 feet, and having an area not exceeding one square foot. For multiple-family dwellings, apartment hotels, and non-residential buildings such sign shall not exceed an area of nine square feet.

5. Non-illuminated or indirectly illuminated identification sign indicating the name of a subdivision or neighborhood area, not exceeding 20 square feet. Such signs shall not exceed two in number for the development.

6. One non-illuminated or indirectly illuminated sign for each street frontage of the lot, indicating the entrance to or exit from an open off-street parking area or off-street parking garage, not exceeding a height of 20 feet, and having an area not exceeding four square feet. Further, such signs shall not project more than 18 inches across a street line.

7. One non-illuminated or indirectly illuminated identification sign for accessory retail and service uses when so authorized in R-8, R-9, R-10, and O-R Districts, not exceeding a height of 12 feet—subject to the additional requirements set forth in Sections 4.8-1 b, 4.9-1 b, 4.10-1 b, and 5.1-1 b of this ordinance.

8. One identification sign for each street frontage, of the lot, as follows:

   (a) For multiple-family dwellings and non-residential buildings in the R-1 through and including R-8 Districts: non-illuminated or indirectly illuminated, not exceeding a height of six feet if free standing and not above 16 feet if attached to a building, and having an area not exceeding 18 square feet; if directly illuminated,

such sign shall not exceed an area of 12 square feet.

(b) For multiple-family dwellings, apartment hotels, and non-residential buildings in the R-9, R-10, and O-R Districts: non-illuminated or indirectly illuminated, not exceeding a height of eight feet if free standing and not above the roof line if attached to a building, and having an area not exceeding 36 square feet; if directly illuminated, such sign shall not exceed an area of 24 square feet. Further, such signs in the R-9, R-10, and O-R Districts shall not project more than eight inches across a street line.

For the purpose of this Section 10.0-2 only, the term multiple-family dwelling shall be interpreted and applied to mean any building containing 20 or more dwelling or efficiency units.

APPENDIX D

In The Circuit Court of Baltimore City

A-821/1977/A-57188

Mayor and City Council of Baltimore

and

James J. Dembeck,

Plaintiffs

v.

James Crockett

and

Mary Crockett, his wife,

Defendants

AFFIDAVIT OF JAMES CROCKETT

State of Maryland, City of Baltimore, to wit:

I HEREBY CERTIFY that, on the 21st day of March, 1979, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared JAMES CROCKETT and made oath in due form of law as follows:

1. That my wife and I are the owners of a property located in the City of Baltimore known as No. 1929 McCulloh Street, which is located in a zoned district, designated by the Mayor and City Council of Baltimore as an "R-8" Residential District.

2. That my wife and I desire to sell said property and wish to find a buyer for the same and, in furtherance of said purpose, have posted on the property a certain sign, of modest size, which reads: "SALE — INSPECTION BY APPOINTMENT ONLY — JAMES CROCKETT, INC., REALTORS — WE MULTIPLE LIST — 728-9666."

3. That said property is located in a neighborhood which now is, and for many years has been, a stabilized residential community, inhabited almost exclusively by a black population.

4. That I have been actively engaged in the real estate business as a licensed real estate agent and broker for approximately 23 years and have served as a member of the Real Estate Commission of the State of Maryland from 1971 to 1975, acting as the Chairman of said Commission for the year 1975.

5. That, as the result of my experience in the real estate business and as a member and Chairman of the Maryland Real Estate Commission, it is my opinion that the posting of a "Sale" sign on the property owned by my wife and me is the most effective method for disseminating to potential buyers not deliberately seeking sales information the fact that our property is for sale and that the alternative methods of communication to prospective home buyers, such as newspaper advertising and multiple listing, involve more expense and less independence and are less effective than the posting of a "Sale" sign.

/s/ MARY E. PERKEY,
Notary Public.

/s/ JAMES CROCKETT,
Defendant.

APPENDIX E

In The Circuit Court for Baltimore City

A-821/1977A-57188

Mayor and City Council of Baltimore

and

James J. Dembeck,

Plaintiffs

v.

James Crockett

and

Mary Crockett, His wife

Defendants

AFFIDAVIT OF JOSEPH DI ANGELO

State of Maryland, City of Baltimore, to wit:

I HEREBY CERTIFY that on this 27th day of March, 1979, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared JOSEPH DI ANGELO, and made oath in due form of law as follows:

I am a senior building inspector, employed by the Department of Housing and Community Development, an agency of the Mayor and City Council of Baltimore.

On March 26, 1979, I personally inspected the premises located at No. 1929 McCulloh Street in the City of

Baltimore, and personally noted the presence of a "Sale" sign located upon said premises.

I personally photographed the premises and the sign thereon.

/s/ JOSEPH DI ANGELO,
Senior Building
Inspector.

/s/ CATHERINE M. PARSON,
Notary Public.

My Commission
Expires 7/1/82

(SEAL)

APPENDIX F

Maryland Rules of Procedure, Rule 610, Sections a.1, a.3 and d.1.

Rule 610. Summary Judgment ..... Gen'l.

a. Motion for.

1. When and by Whom Made.

In an action, a party asserting a claim, whether an original claim, counterclaim, cross-claim, or third-party claim, or a party against whom a claim is asserted, may at any time make a motion for a summary judgment in his favor as to all or any part of the claim on the ground that there is no genuine dispute as to any material fact and that he is entitled to judgment as a matter of law.

* * * * * *

3. Use of Affidavits.

The motion must be supported by affidavit when filed with the pleading asserting the claim or before the adverse party has filed his initial pleading to it; otherwise the motion may be made with or without supporting affida-

vits. Unless the court shall otherwise order for good cause shown, where the motion is required to be supported by affidavit and the opposing party desires to controvert any statement of fact therein, he must file an affidavit or deposition in support of his answer to the motion. Such affidavit or deposition shall be filed before or at the time of filing his initial pleading unless the time for filing is extended pursuant to section a of Rule 309. The failure to file such opposing affidavit or deposition shall constitute an admission for purposes of the motion of all statements of fact in the affidavit of the moving party, but shall not constitute an admission that such motion or affidavit is legally sufficient. In all other cases the adverse party may file an opposing affidavit at or before the time of the hearing.

* * * * * *

d. Proceedings on Motion.

1. Motions Granted.

The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law. * * *.